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Amdt. dated September 7, 2007
Reply to Office Action of March 9, 2007

PATENT

REMARKS

New claims 58-86 are presented in this case for consideration. Previous claims 1-57 have been canceled, without prejudice, to expedite prosecution. Support for use of Applicants' invention by retailers in new claims 58-86 can be found, among other places, in paragraph [0004] of Applicants' specification where it refers to "cafes" as being one of the location owners for use of Applicants' invention.

A.   Formal Matters

Applicants' previous claim 44 had been objected to because of a typographical error. Since claim 44 has been canceled, this objection is now moot.

Claims 1-57 have been rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. More particularly, it is alleged that claims 1-57 failed to recite any physical element and can be implemented using software alone. While Applicants disagree with the Examiner's characterization of previous claims 1-57, the basis for this rejection has now nonetheless become moot with the cancellation of claims 1-57. For new claims 58-86, multiple physical elements in Applicants' system are recited, including a "computer network" and "access point communication equipment."

B.   Prior Art Rejections

1.   The Invention

Applicants have invented a system for allowing a retailer to provide access to a computer network (e.g., the internet) for its customers, while maintaining control over such access. In other systems, the customer uses access point communication equipment at or near a retailer's premises to interact directly with the network service provider while leaving the retailer as a passive observer. In Applicants' invention, the retailer can regulate use of the access point communication equipment located at or near their premises to, among other things, regulate the session time a customer uses the computer network or charge a retailer fee for use of the computer network. In one embodiment, a control server assists the retailer in regulating

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customer access to a computer network. This assistance might involve generation of access codes for use in gaining access to the network. In Applicants' system, these access codes may have various computer network usage limits associated with them. In this way, a business opportunity becomes available to companies who want to work with retailers to provide network access for retail customers while still controlling that access through a control server.

    2.   Prior Art Rejections

          Applicants' previous claims 1-2, 7, 15-17, 26 and 30-31 have been rejected as being anticipated under 35 U.S.C. § 102(b) by Xu's U.S. Patent No. 6,151,628 ("Xu patent"). The Xu patent discloses a system whereby an internet service provider ("ISP") can provide wireless internet access to its own customers as well as customers of other ISPs. In operation, Xu's ISP passes a customer's network traffic through a communication chassis 20. Xu's ISP then uses authentication servers 32A, 32B to check network access authentication data and, if properly authorized, provide wireless internet service. Where appropriate, accounting messages are then transmitted to a remote accounting server (see, Xu patent Abstract; Figure 1; col. 14 line 67 - col. 17 line 22; and col. 17 line 24 - col. 18 line 40).

          Applicants' invention is fundamentally different from Xu's system. The Xu system is a network centric system in which authentication, internet service and accounting is controlled by the ISP network service provider from a central location. By contrast, it is the objective of Applicants' invention to decentralize control of internet services so that a retailer who has access point communication equipment on or near their premises can regulate use of the network by their customers. More particularly, in one embodiment of Applicants' invention, the retailer, not the ISP, handles authentication of internet customers by distributing access codes as the retailer sees fit and using the access point communication equipment located on or near their premises to check such access codes before the customer gains network access. Moreover, in Applicants' system, the retailer can use the access codes to limit a customer's use of the network to a maximum session time or require payment to the retailer for use of the network. Giving control in Applicants' invention of wireless network access to a retailer, who is otherwise independent of the network service provider, can be very important to the retailer's business if,

for example, the retailer is running a café with a limited number of tables and who needs a steady turnover of customers during the lunch hour to stay profitable. Such a café owner cannot afford to have customers lingering endlessly on the internet during the lunch hour who are not buying food. Similarly, to the extent the retailer needs to pay an ISP for allowing customers to use the internet, the retailer may want to charge the customer for their internet use at a rate the retailer deems appropriate. Additionally, Applicants find no disclosure in the Xu patent of a control server which can assist the retailer in regulating access to the network through, for example, providing the retailer with codes which must be used on the access point communication equipment to gain access to the network. Since the Xu patent fails to disclose essential features of Applicants' invention, the Xu patent fails to anticipate any of Applicants currently pending claims 58-86.

Applicants' previous claims 3-6, 8-9, 12-13, 18-23, 24-25 and 27-29 have been rejected under 35 U.S.C. § 103(a) as being "obvious" over the Xu patent in view of Hamilton's U.S. Published Application No. 2002/0176377 ("Hamilton application") either alone or in further combination with the Examiner's Official Notice. The Hamilton application discloses a method for providing packet switched data services in which all or part of the payment for a service may be sponsored by entities other than the user (e.g., a network operator, a content provider, an employer). Like the Xu patent, the Hamilton application discloses a server (in this case a "mobile switching services platform" within a "mobile data switching center") that is remote from the access point and that (a) extracts data from data packets it forwards to other servers for authentication purposes, and (b) extracts data from, and compiles data about, data packets that it forwards to other servers for billing purposes (see, Hamilton application Figure 1; paragraphs [0056]; [0060]; [0061]; [0070]; [0073]; [0143]; [0171]; and [0193]).

Like the Xu patent, the Hamilton application discloses a network centric system which fails to address the problem of providing a retailer with control over access point communication equipment which may be located on or near their premises. In Applicants' invention, the retailer has a measure of control over authentication, metering and/or rating for wireless network access. In the Xu patent and Hamilton application, wireless network access is entirely controlled by remote authentication and accounting servers operated by the network

service provider. Since both the Xu patent and Hamilton application teach away from Applicants' invention, the Xu patent and Hamilton application do not, either alone or in combination, render as obvious any of Applicants' currently pending claims 58-86. *See McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1354 (Fed.Cir. 2001)(A "useful general rule" is that references which "teach away cannot serve to create a prima facie case of obviousness").

Applicants' previous claims 10, 11 and 14 have been rejected under 35 U.S.C. § 103(a) as being "obvious" over the Xu patent in view of Gubbi's U.S. Patent No. 6,463,473 ("Gubbi patent"), either alone or in further combination with the Examiner's Official Notice or the Hamilton application. The Gubbi patent discloses a method to allow access by a client to a network in which (a) the client sends a request for access, including the client's unique identifier, to a server, (b) the server automatically grants access, using the unique identifier to update a client list that includes information regarding resources available to the client, and (c) the server automatically uninstalls the client upon expiration of a time period. Although the Gubbi patent discloses granting temporary access to a network and allocating bandwidth, the Gubbi patent does not disclose authentication of a client by a retailer having access point communication equipment on or near their premises. Moreover, the Gubbi patent provides no disclosure of allowing such a retailer to meter and rate a communication session by their customers using the access point communication equipment. Contrary to the Examiner's citation to col. 4 lines 22 - 35 of the Gubbi patent, Applicants have found nothing in the Gubbi patent regarding maximum data volume, methods of metering and rating, time period restrictions (e.g. specific time of day, day of week, etc.), or restrictions on the number of clients. Since the Xu patent, Gubbi patent and Hamilton application teach away from Applicants' invention, the Xu patent, Gubbi patent and Hamilton application, either alone or in any combination, do not render as obvious any of Applicants' currently pending claims 58-86.

Applicants' previous claims 32-39, 40-49 and 51-57 have been rejected under 35 U.S.C. § 103(a) as being "obvious" over the Xu patent in view of Naghian's U.S. Patent No. 6,879,574 ("Naghian patent"), either alone or in further combination with the Hamilton application, the Gubbi patent and/or the Examiner's Official Notice. The Naghian patent discloses a system in which a node is temporarily elected to be a trunk node for an ad-hoc group

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of mobile and fixed nodes and is configured to act as a gateway for the group of nodes to a backbone network. In some Naghian embodiments, authentication and accounting are handled by a remote, centralized AAA Server 190 (see, Naghian patent Figure 1 and col. 13 line 23 - col. 14 line 43). In other Naghian embodiments, authentication is handled by a remote, centralized HLR Server. (see, Naghian patent col. 9 lines 36-45). Contrary to Applicants' invention, Applicants find no disclosure in the Naghian patent of allowing a retailer independent of the network service provider to control access to a computer network through access point communication equipment located on or near their premises. Moreover, none of the disclosed Naghian embodiments perform authentication or accounting within Naghian Access Point 428 (see, Naghian patent Figure 4 and col. 7 lines 46 - 67). Since the Xu patent, Naghian patent, Hamilton application and Gubbi patent teach away from Applicants' invention, the Xu patent, Naghian patent, Gubbi patent and Hamilton application, either alone or in any combination, do not render as obvious any of Applicants' currently pending claims 58-86.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at (415) 576-0200.

Respectfully submitted,

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